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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/623,311  | 07/18/2003  | Peter Louis Gebrian  | DCS-9175            | 3443             |
| 34500   | 7590        | 03/08/2006           | EXAMINER            |                  |
| DADE BEHRING INC.<br>LEGAL DEPARTMENT<br>1717 DEERFIELD ROAD<br>DEERFIELD, IL 60015 |             |                      | JOHNSON, VICKY A    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3682                |                  |
| DATE MAILED: 03/08/2006   |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/623,311

Applicant(s)

GEBRIAN, PETER LOUIS

Examiner

Vicky A. Johnson

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Rointru et al (US 6,159,120).

Rointru et al disclose an automated tensioner comprising a pulley (19) rotatably attached to a arm (17), the arm having a leg portion (33) slideably inserted within a closed end bore (35) formed in a latching base (5, 29), the leg portion slideably inserted through a latching porthole (unnumbered opening, see Fig 1) in an elongate latch (5, 17, 29, Webster's Dictionary 10<sup>th</sup> Edition describes a latch as "any of various devices in which mating mechanical parts engage to fasten, but not usually to lock"), a latching spring (27), a pin (53), a groove (9.3).

### ***Response to Arguments***

Some further comments regarding the applicant's remarks are deemed appropriate.

The applicant argues that the Rointru et al reference fails to meet the limitations of the claims because the arm (17) is constrained at a fixed distance from the base. Claim 1 does not provide any limitation to the arm being movable whatsoever. Claim 1 does recite the limitation of a leg portion being slidably inserted in a porthole, but the

claim does not state that the arm and the leg portion are attached in any manner. Therefore, the reference meets the limitations of the claims.

It is further argued that the arm (17) does not have a leg portion because they are not connected together. The entire tensioner is connected either directly or indirectly, because "connected" is a broad term, however, claim 1 does not recite that the two elements are connected. The claim does not define what the leg portion is made up of or how it is attached to the arm. The only limitation for the leg portion is that it is part of the arm (see Fig 1, the leg portion (33) is inside the arm (17)), and that it is slidably inserted (which is not the same as slidable) within a closed bore (35) (see Fig 1).

The applicant also argues that the leg portion is not slidably inserted through a porthole. This limitation is believed to be a method of assembly, which is not germane to the patentability of the device itself.

The porthole is the unnumbered end of the part (29), which is open to the closed end of the arm (17) (see Fig 1).

The applicant's remarks have been accorded due consideration, however, they are not deemed fully persuasive.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within


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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6217. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Vicky A. Johnson  
Primary Examiner  
Art Unit 3682  
3/6/06